

CIVIL REVISION APPLICATION NO. 1306 OF 1996.

Date of decision: 3.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. P.K. Jani, advocate for petitioners.

Mr. U.D. Shukla, advocate for respondent No.1.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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February 3, 1997.

Oral judgment:

Rule. Mr. Shukla waives service of rule on behalf of respondent No.1. Respondents No.2 to 4 are formal parties as they are original defendants in the suit proceedings.

Respondent No.1/original plaintiff filed Civil Suit No. 153 of 1996 for declaration that the sale deed alleged to have been executed on 27.1.1995 is null and void and consequent relief for maintaining status quo and restraining defendants from making further construction. Plaintiff also preferred application Ex.5 for interim relief. Before Ex.5 application could be heard, the

plaintiff/ respondent No.1 made application Ex.17 calling upon the petitioners to produce original of xerox copy produced at mark 3/1. It is also argued that in application Ex.17 a request to give inspection of the impugned document as well as 'banakhat' dated 28.4.1995 alleged to have been executed by defendant Nos.1 and 2 in favour of defendant No.3 was made. The court below vide order dated 17.8.1996 directed the defendants to produce documents within eight days from the date of the order. Aggrieved by the above order the original defendants No.3, 4 and 6 have preferred this application.

On perusal of the impugned order it appears that the application for production, Ex.17, was replied by defendants vide Ex.19. Of course, the contents of reply Ex.19 have not been narrated in detail but copy thereof has been supplied to the court for reference. Existence of document is not in dispute but it is stated that the document in question was produced before the appropriate authority for registration and has not been returned till date duly registered. As a cardinal rule a document can be produced or can be directed to be produced only if the same is found in possession of the party who is called upon. As stated above, admittedly, the document is not in possession of the defendants and, therefore, the question of production thereof by defendants does not arise. Under these circumstances, I find that the order appears to be erroneous and cannot be sustained.

Mr. Shukla for the respondent No.1 has vehemently argued that as execution of documents itself is in challenge and allegation about forgery is made in the plaint, it would not be in the larger interest to proceed with the hearing of Ex.5 unless inspection thereof is taken. Since the document is not lying in custody of defendants and as stated above is lying with competent authority, it is not within the control of original defendants to give inspection thereof. However, it will be open for the parties to approach the competent authority for inspection. In order to do so, it will be open for the parties to apply to the court below to issue appropriate direction to competent authority to give inspection of the document, that is, sale deed dated 27.1.1995 alleged to have been executed by respondent No.1/original plaintiff in favour of respondents No.2 and 3 /original defendants No.1 and 2. It is hereby made clear that the petitioners shall not raise any objection in the event the respondents make application to court for getting inspection of documents which is lying in the custody of appropriate authority.

Since the controversy centers around execution of sale deed dated 27.1.1995 it is hoped that depending upon the facts and circumstances the trial court would take up hearing of Ex.5 only after inspection of the document is taken.

In light of the aforesaid observation, the application is allowed and the impugned order dated 17.8.1996 is set aside. Rule is made absolute with no order as to costs.